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No. 325

In the Supreme Court of the United States

OCTOBER TERM, 1944

MAY R. KIRKPATRICK, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Question Presented	2
Statutes and Regulations Involved	2
Statement	2
Argument	5
Conclusion	9
Appendix	10

CITATIONS

Cases:	
Bank of Commerce v. *New York City*, 2 Black 620	8
Baumgartner v. *Commissioner*, 51 F. 2d 472	7
Botz v. *Helvering*, 134 F. 2d 538	5
Commissioner v. *Western Union Telegraph Co.*, 141 F. 2d 774	6
Fidelity Trust Co. v. *Commissioner*, 141 F. 2d 54	7
Fink v. *O'Neil*, 106 U. S. 272	8
Harwood v. *Eaton*, 68 F. 2d 12	5, 6
Hatch v. *Morosco Holding Co.*, 50 F. 2d 138	6
Huntley v. *Gile*, 32 F. 2d 857	8
Leighton v. *United States*, 289 U. S. 506	7
Levy v. *Commissioner*, 48 F. 2d 725	8
Levy, Estate of, 141 Cal. 646	6
Liquidators of Exchange Nat. Bank v. *United States*, 65 F. 2d 316	5
Michigan v. *United States*, 317 U. S. 338	8
National Lead Co. v. *United States*, 252 U. S. 140	6
Pann v. *United States*, 44 F. 2d 321	7
Parrott Estate Co. v. *McLaughlin*, 89 F. 2d 188	6
Phillips v. *Commissioner*, 283 U. S. 589	5
Pierce v. *United States*, 255 U. S. 398	7
Pillsbury, Estate of, 175 Cal. 454	6
Proutt's Estate v. *Commissioner*, 125 F. 2d 591	9
Rankin v. *City of Big Rapids*, 133 Fed. 670	7
Shambaugh v. *Scofield*, decided March 11, 1942	8
Staley v. *Vaughn*, 50 S. W. 2d 907	8
United States v. *Garbutt*, 35 F. 2d 924	7
United States v. *Herron*, 20 Wall. 251	8
United States v. *Howell*, 9 Fed. 674	8, 9
United States v. *Texas*, 314 U. S. 480	8
United States v. *Updike*, 281 U. S. 489	7
United States Bank v. *Halstead*, 10 Wheat. 51	8
Wayman v. *Southard*, 10 Wheat. 1	8

	Page
Statutes:	
Probate Code of California (1931):	
Section 660	5, 10
Section 680	10
Internal Revenue Code:	
Section 311 (26 U. S. C., Sec. 311)	5, 7, 11
Section 3690 (26 U. S. C., Sec. 3690)	9, 12
Section 3691 (26 U. S. C., Sec. 3691)	9, 12
Section 3692 (26 U. S. C., Sec. 3692)	13
Revenue Act of 1932, 47 Stat. 169, Sec. 526	7
Miscellaneous:	
Treasury Regulations 94, Art. 311–1	6
Treasury Regulations 101, Art. 311–1	6
Treasury Regulations 103, Sec. 19.311–1	6, 13

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 325

MAY R. KIEFERDORF, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court of the United States (R. 21–31) is reported at 1 T. C. 772. The opinion of the Circuit Court of Appeals (R. 51–58) is reported at 142 F. 2d 723.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 6, 1944 (R. 59). An order denying the petition for rehearing was entered on June 2, 1944 (R. 60). The petition for a writ of certiorari was filed on August 7, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Under a California statute authorizing the probate court to set apart to the surviving spouse all or any part of the property of the deceased "exempt from execution", petitioner was awarded the proceeds of certain insurance policies on the life of the decedent payable to the estate. These proceeds were property "exempt from execution" under California law.

The question is whether petitioner is liable as a transferee, under Section 311 of the Internal Revenue Code, for income taxes due from the decedent, whose estate is insolvent, by reason of her receipt of such insurance proceeds.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in the Appendix, *infra,* pp. 10–14.

STATEMENT

The facts which were stipulated (R. 16–20) and found by the Tax Court (R. 21–24) are as follows:

Petitioner's husband, W. J. Kieferdorf, hereafter referred to as decedent, died testate, a resident of San Francisco, California, on December 3, 1939, being survived by his widow and two minor children (R. 21). The Bank of America National Trust & Savings Association was duly appointed and qualified as executor of his estate on January 3, 1940 (R. 21–22).

On March 15, 1940, the executor filed an income tax return, reporting the income received by decedent during 1939. The tax shown to be due was $557.31, and the correctness of this amount is not in issue. No part of the tax was paid by the executor though due notice and demand were served on it on or about June 1, 1940, and a second notice was served on it on or about July 31, 1940. (R. 22.)

On January 25, 1940, petitioner filed a petition in the Superior Court, in accordance with the Probate Code of California, requesting that a family allowance in the sum of $300 per month be granted for her minor children who were wholly dependent upon the estate, and for herself, she being "partially dependent thereon for support and maintenance." On February 8, 1940, the Superior Court entered an order directing that $250 per month be paid as a family allowance "during the progress of the settlement of the estate or until further order of the Court". The executor complied with the order thereunder and pursuant thereto made aggregate payments of $2,090.73, such payments being discontinued after a final payment of $90.73 on August 9, 1940, because of exhaustion of the funds of the estate. (R. 22.)

On April 5, 1940, petitioner filed another petition in the same court requesting that the property of the estate exempt from execution be set apart for the use and benefit of decedent's family. The

court set apart for their use and the executor paid to petitioner on June 6, 1940, $11,914.52 representing the proceeds of six policies of life insurance, the annual premiums on which had been less than $500 during decedent's life. After this amount was paid to petitioner, approximately $590 remained in the estate, and there were liabilities of several thousand dollars. (R. 22–23.)

The executor filed a final report covering the period from appointment to September 3, 1940. The report showed that income taxes were due on income received by the decedent during his lifetime and that such sums had not been paid because of the exhaustion of the funds and assets of the estate by payment of costs of administration, a preferred claim, the setting aside of exempt property, and the payment of a family allowance. The exempt property referred to was the proceeds of the insurance. The report asked that any after-discovered property be distributed subject to charges for unpaid administration costs, income taxes, and other claims. (R. 23–24.)

The executor was discharged and the administration of the estate was closed on or about October 9, 1940. All of the assets of the estate had been disposed of by September 3, 1940, leaving unpaid federal and state incomes taxes, and other claims in the amount of $5,452.01; also executor's commissions and attorney's fees. (R. 24.)

The Tax Court, two members dissenting (R. 32–38), held (R. 24–31) that petitioner was liable

for the unpaid income tax due from decedent for the year 1939 on the ground that California law could not create exemptions from execution or attachment for the collection of federal taxes. The Circuit Court of Appeals affirmed (R. 58).

ARGUMENT

The case was correctly decided below upon a principle of law early enunciated by this Court, and no conflict is presented.

The petitioner admits that she received the proceeds of insurance policies payable to the estate of her deceased husband in an amount more than sufficient to satisfy the unquestioned liability of the estate for income taxes due from the decedent. She pleads, however, that she is not liable as a "transferee" within the purview of Section 311 of the Internal Revenue Code (*Appendix, infra,* p. 11) on the ground that state law governs in determining transferee liability, and petitioner's receipt of these proceeds stemmed from a California statute (Probate Code of California, Section 660, *Appendix, infra,* p. 10) providing for their award to her as the taxpayer's surviving spouse, free from the claims of his creditors.

As in *Phillips* v. *Commissioner*, 283 U. S. 589, it is not necessary here to consider whether or to what extent transferee liability is predicated upon local law.[1] Petitioner was a transferee of assets of an estate even under the California law

[1] See *Botz* v. *Helvering*, 134 F. 2d 538 (C. C. A. 8th); *Harwood* v. *Eaton*, 68 F. 2d 12 (C. C. A. 2d); *Liquidators of*

upon which she relies; she took property which was part of the decedent taxpayer's estate and which, but for the probate court's order pursuant to her petition, would have remained a part of the estate. California decisions make this amply clear. *Estate of Pillsbury,* 175 Cal. 454; *Estate of Levy,* 141 Cal. 646.

We may admit, as petitioner contends (Pet. 18–19), that she was not a "distributee" of the estate in the probate sense of the term. See *Parrott Estate Co.* v. *McLaughlin,* 89 F. 2d 188 (C. C. A. 9th). This does not aid her case. The federal statute did not attempt a universal definition of the term "transferee", but as the court below pointed out (R. 54–55), regulations [2] early promulgated, which have the force of law because of continuation through successive reenactments of the statute (*National Lead Co.* v. *United States,* 252 U. S. 140), included in the term "transferee" not only the distributee of a decedent's estate in the technical sense, but also "all other classes of distributees". In fact, the petitioner herself defines (Pet. 18) the word "distribution" as "apportionment among several or many; as, distribu-

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Exchange Nat. Bank v. *United States,* 65 F. 2d 316 (C. C. A. 5th); *Hatch* v. *Morosco Holding Co.,* 50 F. 2d 138 (C. C. A. 2d); cf. *Commissioner* v. *Western Union Telegraph Co.,* 141 F. 2d 774 (C. C. A. 2d), overruling *Harwood* v. *Eaton, supra.*

[2] See Sec. 19.311–1, Treasury Regulations 103, *Appendix, infra,* pp. 13–14. See also Art. 311–1 of Treasury Regulations 101 and Art. 311–1 of Treasury Regulations 94, under the 1938 and 1936 Revenue Act respectively.

tion of gifts". Furthermore, as the Third Circuit recently said in construing the similarly worded transferee definition in the gift tax law (Section 526 (f) of the Revenue Act of 1932, 47 Stat. 169), the term transferee is to be taken in its common usage "as one to whom something is transferred", *i. e.*, a "recipient". *Fidelity Trust Co.* v. *Commissioner,* 141 F. 2d 54, 57. Indubitably the petitioner was a "recipient".

The basis of transferee liability under the federal statute is "liability, at law or in equity." Section 311 of the Internal Revenue Code. Since the effect of petitioner's withdrawal of these proceeds was to render the taxpayer's estate insolvent, she became to the extent of such withdrawal liable in equity under familiar principles obtaining in California as elsewhere. The situation is analogous to one in which a corporation divests itself of all of its assets by distribution to its stockholders; in such case, equity will require the stockholders to answer to the corporation's creditors. *Leighton* v. *United States,* 289 U. S. 506; *Pierce* v. *United States,* 255 U. S. 398; *Pann* v. *United States,* 44 F. 2d 321 (C. C. A. 9th); *United States* v. *Garbutt,* 35 F. 2d 924 (C. C. A. 10th). Similarly, after the assets of an estate have been distributed, a claim is recoverable in equity from the distributees to the extent of the distributed property. *Rankin* v. *City of Big Rapids,* 133 Fed. 670 (C. C. A. 6th); see also *United States* v. *Updike,* 281 U. S. 489; *Baum-*

gartner v. *Commissioner,* 51 F. 2d 472 (C. C. A. 9th); *Levy* v. *Commissioner,* 48 F. 2d 725 (C. C. A. 9th); *Huntley* v. *Gile,* 32 F. 2d 857 (C. C. A. 9th).

The California statute cannot act as a shield against petitioner's liability. Manifestly, it is nothing more nor less than an ordinary "homestead" provision for the benefit of a debtor's dependents after his death. It does not mention the United States, and in the absence of a clear intention to refer to the United States, should not be construed as having such purpose. *United States* v. *Herron,* 20 Wall. 251. At any rate, state homestead and exemption laws are not laws barring claims of the United States. *United States Bank* v. *Halstead,* 10 Wheat. 51; *Wayman* v. *Southard,* 10 Wheat. 1; see also *Fink* v. *O'Neil,* 106 U. S. 272; *Shambaugh* v. *Scofield* (W. D. Tex.), decided March 11, 1942 (1942 C. C. H., par. 9413); *United States* v. *Howell,* 9 Fed. 674 (W. D. N. C.); *Staley* v. *Vaughn,* 50 S. W. 2d 907 (Tex. Civ. App.). No state law can impede the collection of the national revenue, for that is imperative to the survival of the Federal Government and the accomplishment of the objects for which it was established. *Bank of Commerce* v. *New York City,* 2 Black 620; see also *Michigan* v. *United States,* 317 U. S. 338; *United States* v. *Texas,* 314 U. S. 480.

Congress has adopted its own "public policy" with respect to exemptions of citizens from the claims of their National Government. It has

specifically enumerated certain items of property which may not be taken in satisfaction of those claims. Life insurance proceeds are not in the list. Internal Revenue Code, Sections 3690 and 3691 (*Appendix, infra,* pp. 12–13). That list cannot be supplemented by state law. *United States* v. *Howell,* 9 Fed. 674 (W. D. N. C.), cf. *Proutt's Estate* v. *Commissioner,* 125 F. 2d 591 (C. C. A. 6th). If a state cannot exempt the property of its citizens from the claims of the Federal Government directly, it cannot accomplish the same result indirectly by authorizing the withdrawal of assets from their estates. That is precisely the effect of the California statute as the petitioner would have it applied here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APPENDIX

Probate Code of California (1931):

§ 660. *Possession before inventory. Setting aside homestead.* The decedent's surviving spouse and minor children are entitled to remain in possession of the homestead, the wearing apparel of the family, the household furniture and other property of the decedent exempt from execution, until the inventory is filed. Thereupon, or at any subsequent time during the administration, the court, on petition therefor, may in its discretion set apart to the surviving spouse, or, in case of his or her death, to the minor child or children of the decedent, all or any part of the property of the decedent exempt from execution, and must set apart to such spouse or to such minor child or children the homestead selected, designated and recorded, if such homestead was selected from the community property, or from the separate property of the person selecting or joining in the selection of the same.[3]

* * * * *

§ 680. *Right to allowance. Preference.* The widow and minor children are entitled

[3] Section 660 of the Probate Code was formerly Section 1465 of the Code of Civil Procedure and was transferred into the California Probate Code when the latter was first created in 1931. Cases prior to 1931, therefore, refer to the section as 1465 of the Code of Civil Procedure. When the Section was incorporated in the Probate Code, the words "in its discretion" were inserted after the words "the court, on petition therefor, may".

to such reasonable allowance out of the estate as shall be necessary for their maintenance according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, must not continue longer than one year after granting letters. Such allowance must be paid in preference to all other charges, except funeral charges, expenses of the last illness and expenses of administration, and may, in the discretion of the court or judge granting it, take effect from the death of the decedent.

Internal Revenue Code:

SEC. 311. TRANSFERRED ASSETS.

(a) *Method of Collection.*—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *Transferees.*—The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

* * * * *

(f) *Definition of "Transferee".*—As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee. (26 U. S. C. Sec. 311.)

SEC. 3690. AUTHORITY TO DISTRAIN.

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (26 U. S. C. Sec. 3690.)

SEC. 3691. PROPERTY EXEMPT FROM DISTRAINT.

(a) *Enumeration.*—There shall be exempt from distraint and sale, if belonging to the head of a family—

(1) *School books and wearing apparel.*—The school books and wearing apparel necessary for such family; also

(2) *Arms.*—Arms for personal use;

(3) *Livestock.*—One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed $50;

(4) *Fodder.*—The necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days;

(5) *Fuel.*—Fuel to an amount not greater in value than $25;

(6) *Provisions.*—Provisions to an amount not greater than $50;

(7) *Household furniture.*—Household furniture kept for use to an amount not greater than $300; and

(8) *Books and tools of trade or profession.*—The books, tools, or implements, of a trade or profession, to an amount not greater than $100.

(b) *Appraisal.*—The officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt.

(26 U. S. C. Sec. 3691.)

SEC. 3692. LEVY.

In case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.

(26 U. S. C. Sec. 3692.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

SEC. 19.311–1. *Claims in cases of transferred assets.*—The amount for which a transferee of the property of a taxpayer is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, as amended, in respect of any income tax imposed by chapter 1 (paragraph 81 of the Appendix to these regulations), whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by chapter 1, except as hereinafter provided.

The provisions relating to delinquency in payment after notice and demand and the amount of interest attaching because of such delinquency, the authorization of distraint and proceedings in court for collection, the prohibition of claims for abatement and claims and suits for refund, the filing of a petition with the Board of Tax Appeals, and the filing of a petition for review of the Board's decision, are included in the sections of the Internal Revenue Code (and regulations pertaining thereto) relating to deficiencies in tax imposed by chapter 1.

The term "transferee" as used in this section includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in section 112, and all other classes of distributees.

* * * * *

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